

## **REMARKS**

### **I. STATUS OF THE CLAIMS**

Claims 50-54, 69, 81, and 83-94 were under examination at the time of the Action. Claims 69, 81, 85, 92, 93, and 94 have been canceled. Claims 50-53, 83, and 86-91 have been amended. Claim 95-99 have been added. Support for the new and amended claims can be found in the claims as originally filed and the specification on pages 44-48. Thus, claims 50-54, 83, 84, 86-91, and 95-99 are currently under examination.

### **II. REJECTION UNDER 35 U.S.C. §103**

Claims 50-54, 69, and 81-94 are rejected under 35 U.S.C. § 103(a) over Raspe (as evidenced by Van Run) in view of Hyldig-Nielsen. Applicants respectfully traverse.

Obviousness requires a suggestion of all the elements in a claim (*CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 [68 USPQ2d 1940] (Fed. Cir. 2003)) and “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 [82 USPQ2d 1385] (2007).

The combination of Raspe (as evidenced by Van Run) in view of Hyldig-Nielsen do not teach or suggest all elements of the claimed invention, particularly the analysis of small volume samples and the detection of lymphocytes. In fact, the membrane detection system of Raspe is configured to process sample volumes of 10 mL or greater (“By preference, the flow through speed is 2-30, by preference 2-20, more preferred 3-10 ml/mm<sup>2</sup>/min. In this way, flow through speeds are achieved allowing filtering of large quantities of medium in a relatively short time. In general, the quantity of medium to be filtered is 10-1000 ml . . . “ See Raspe translation page 5.)

The cited references do not teach or suggest all elements of the currently claimed invention. Applicants request the withdrawal of the rejection.

### **III. DOUBLE PATENTING**

Claims 50-54, 69, and 81-94 are also provisionally rejected under the doctrine of obviousness-type double patenting as being obvious over U.S. Pat. App. 11/022,365. Applicants respectfully ask that the request for a terminal disclaimer be held in abeyance until the present application has been allowed.

### **IV. CONCLUSION**

The present claims are in a condition for allowance and such favorable action is requested. The Examiner is invited to contact the undersigned agent at (512) 536-3167 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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